

## STAFF REPORT

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**TO:** GALLATIN COUNTY / BOZEMAN AREA BOARD OF  
ADJUSTMENT

**FROM:** AMY WARING, CODE COMPLIANCE SPECIALIST  
GALLATIN COUTY COMPLIANCE DEPARTMENT

RANDY JOHNSON, SENIOR PLANNER  
GALLATIN COUNTY PLANNING DEPARTMENT

**SUBJECT:** MARTEL VARIANCE REQUEST

**HEARING DATE:** JANUARY 20, 2009; 2:00 PM

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### DESCRIPTION / LOCATION:

Jason and Shelly Martel (Applicant) have requested a variance from the side yard, rear yard, and watercourse setback requirements of the R-1 (Residential Single-Family, Low Density) District of the Gallatin County / Bozeman Area Zoning Regulation (Zoning Regulation). In addition, the variance from the rear yard setback will also require a variance from a development standard in the Zoning Regulation to increase the amount of yard coverage that an accessory structure is allowed to occupy in a rear yard setback. The property is a County lot adjacent to a residential City lot that the Applicant owns in the Thompson Addition #3 subdivision.

The purpose of the hearing is to consider a request for a variance from Sections 14.050 (side and rear yard setbacks), 50.050.G (percentage of yard coverage), and 50.060.D (watercourse setback) of the Zoning Regulation. The Zoning Regulation requires a 12-foot side yard setback (each side), 25-foot rear yard setback, 35-foot watercourse setback, and allows not more than 25% of any required rear yard to be occupied by accessory structures.

The subject property is described as Parcel II: Lot 5A, Adjacent to Lot 5, Block 1, Thompson Addition #3, Section 18, Township 2 South, Range 6 East, PMM, Gallatin County, Montana. In general, the property is located at 2104 Spring Creek Drive, Bozeman, MT. Refer to the vicinity map below.

## Martel Vicinity Map



### STAFF FINDINGS:

1. **Location.** The Applicant owns two legal tracts of record, collectively referred to as 2104 Spring Creek Drive, Bozeman, Montana. The tract fronting Spring Creek Drive is located within the City of Bozeman, and the back (landlocked) lot is located in Gallatin County. The tracts are described as:
  - A. Parcel I: Lot 5, Block 1, Thompson Addition #3, Section 18, Township 2 South, Range 6 East, PMM, Gallatin County, Montana. **(CITY LOT)**
  - B. Parcel II: Lot 5A, Adjacent to Lot 5, Block 1, Thompson Addition #3, Section 18, Township 2 South, Range 6 East, PMM, Gallatin County, Montana. **(COUNTY LOT)**

The City lot is part of Thompson Addition #3 Subdivision, which was platted in 1962. The County lot is one of seven lots located in Gallatin County. These seven lots are completely surrounded by City, and are generally considered an extension of the City lots with homes fronting Spring Creek Drive. Both the City and County lots are accessed by Spring Creek Drive from Tracy, south of Kagy Boulevard.

2. **Proposal.** The Applicant has requested a variance from the provisions of the Gallatin County / Bozeman Area Zoning Regulations to locate a recreational sport court on Parcel II, thus reducing the required side yard, rear yard, and watercourse setbacks as follows:

**Martel Sport Court Variance Request\*\***

<b>Setback</b>	<b>Zoning Regulation</b>	<b>Existing Setback</b>	<b>Encroachment / Variance Request</b>
South side yard	12'	5'8"	6' 4" (approx. 246 sq. ft)
North side yard	12'	6'2"	5'10" (approx. 246 sq. ft)
Rear yard setback	25'	6'	19' (approx. 1900 sq. ft)
Watercourse setback	35'	33'7"	1'5" for approx. 13 linear feet (19 sq. ft.)

\*\*Note: The Code Compliance Specialist verified the existing setbacks in the table above with the Applicant on January 6, 2009. Previous setback measurements provided at the December 16, 2008 appeal hearing were taken from the Applicant's fence, which is located approximately one foot inside the property line. Therefore, existing side and rear yard setbacks increased by about one foot, and the encroachment/variance request decreased by about one foot. In addition, the water course setback was measured by holding a tape measure taught rather than laying it on the ground. This decreased the variance encroachment request by about three feet.

As a result of the encroachment into the rear yard setback, the Applicant will also require a variance from Section 50.050.G to increase the amount of an accessory structure allowed in a rear yard setback from 25% to approximately 68%, and increase of 43%.

Section 50.050.G provides that accessory structures may not occupy more than twenty-five percent (25%) of any *required rear yard*. Section 4.1860 defines "Yard, required" as, "the minimum dimension of a front, side or rear yard as established by the use regulations for each district."

	<b>Dimensions</b>	<b>Square Feet</b>	<b>Percent of Total</b>
<b>Rear Yard</b>	112 ft long x 25 ft deep	2800	
<b>Sport Court</b>	100 ft long x 19 ft deep in the rear setback	1900	68%

Overall, a total of 40% of the sport court is located within the side yard, rear yard and water course setbacks (2411 sq. ft. of 6000 sq. ft.). The structure does not encroach into any known utility easements. The variance application and supplementary information submitted by the Applicant explains their reasons and justification for the requested variance. **Exhibits A & B.**

3. **Adjacent Land Use.** The primary land uses surrounding the applicant's property are residential uses. Neighboring parcels are zoned R-1 in the GC/BA Zoning District (the 7 County lots) and R-1 by the City of Bozeman (single family homes and condominiums on both Spring Creek and Fairway Drive).

4. **Gallatin County / Bozeman Area Zoning Regulation**

- A. **Section 14.010 Intent.** The applicant's property is zoned R-1 Residential-Single-Family, Low Density. The intent and purpose of R-1 Zoning is:

*"...the intent of the R-1 residential single-family, low density district is to provide for low density single-family residential development, to conform to the system of services available, to the slope of the land or other limiting factors, and to provide for such community facilities and services as will serve the area's residents while protecting the residential character and quality of the area."*

- B. **Section 14.020(C) Permitted accessory uses in the R-1 District:** Include other buildings and structures typically accessory to residential uses, and *private* or jointly owned community center *recreational facilities*, pools, tennis courts, and spas.

The sport court is a permitted use on the Applicant's County lot.

- C. **Section 14.050 Yards.** The R-1 District shall have the following minimum yards:

Front: 25 feet.  
Rear: 25 feet.  
Side: 12 feet each side.

- D. **Section 14.040 Lot coverage and floor area.** Provides that not more than 40% of the lot area shall be occupied by principal and accessory buildings.

The variance request complies with Section 14.040. There are three structures on the 17,360 sq. ft. County lot, including a 6000 sq. ft. sport court, 529 sq. ft. accessory structure, and a 144 sq. ft. shed. Even if the sport court is included in this calculation (it is a Structure but not a Building), the square footage of these three structures amounts to 6673 sq. ft, or 38% of the total lot area.

- E. **Section 50.035 (A)(1). Glare and Lighting.** Light shall be *directed down and/or away from any adjoining residential district*, and shall not detract from driver visibility on adjacent streets. In addition, all lighting (except for security purposes) shall be turned off between eleven p.m. and six a.m. (11pm-6am).

The sport lighting is a brand called the Courtsider XL, available from LSI Industries Inc. A brochure about these lights is provided as **Exhibit C**. The lighting fixtures each contain one 1000 watt metal halide lamp, and the posts are 20 feet tall. Each light is controlled independently with its own switch.

During an evening inspection on January 6, 2009, the Code Compliance observed what is referred to as “Light Trespass” onto adjacent residential properties, most notably the Lee residence at 2101 Fairway Drive. The Code Compliance Specialist also observed that the roof of the Martel’s accessory structure and several large trees adjacent to the sport court were illuminated. The results of this inspection are summarized in **Exhibit D**.

- F. **Section 50.050.G. Percentage of Yard Coverage.** Accessory structures may occupy not more than twenty-five percent (25%) of any required year yard.
- G. **Section 50.060.A.6. Permitted Encroachments into Yards.** Floodlights and other sources of illumination may be located in required yards, provided that the *direct* source of light is not visible from the public right-of-way or adjacent residential property.

Therefore, the lights may be located in the setback independent of any decision on this variance request to locate the sport court in the setbacks. They must still comply with Section 50.035 (A)(1).

- H. **Section 50.060(D) Watercourse Setbacks.** Requires a 35-foot setback from structures to the mean high water mark and also requires a 5-foot vegetative buffer.
  - I. **Section 50.070 Fences, walls and hedges.** Fences may be constructed on the lot lines or within the setback provided they do not exceed eight feet in height (4 feet in any corner side yard or front yard). Fences shall be maintained in a condition of reasonable repair and shall not be allowed to remain in disrepair. No barbed wire or electric fences. The finished side must face out.
5. **Notice.** Notice of the public hearing was published in the Bozeman Daily Chronicle on January 4 and 18, 2009, posted on the site in question and in front of the Applicant’s residence on Spring Creek Drive, and sent to adjacent property owners via certified mail. The Applicant provided a list of adjacent property owners with the variance application, and certified that the list of 19 property owners was accurate.

#### CRITERIA FOR GOVERNING BODY REVIEW:

Section 56.060 of the Gallatin County / Bozeman Area Zoning Regulations outlines the criteria of evaluation for granting variances.

In approving an application for a variance the Board of Adjustment shall designate such lawful conditions as will secure substantial protection for the public health, safety and general welfare, and shall find:

- A. That the variance will not be contrary to the public interest;

- B. That a literal enforcement of this title will result in unnecessary hardship owing to conditions unique to the property;
- C. The spirit of this title will be observed and substantial justice done.

The Board of Adjustment must make a decision and finding on the variance request.

#### **SUGGESTED CONDITIONS:**

**If the Gallatin County/Bozeman Area Board of Adjustment, after hearing and considering all public testimony, finds that the request meets the criteria in the zoning regulation (Section 56.060) and grants the variance, the following conditions of approval are suggested:**

1. The Applicant shall obtain an after-the-fact land use permit and pay a double permit fee.
2. Prior to issuance of a land use permit, the applicant shall demonstrate compliance with Section 50.035 (A)(1), which requires light to be directed down and away from any adjoining residential district.
3. The Applicant shall submit a mitigation plan to the Code Compliance Specialist for revegetating the banks of Spring Creek with native riparian vegetation. Applicant shall acquire all applicable permits to perform and implement the mitigation plan.
4. The Applicant shall not construct any additional structures/buildings on the County lot.

#### **EXHIBITS:**

- A: Applicant's Variance Application
- B: Applicant's Supplementary Information
- C: Courtsider XL brochure from LSI Industries
- D: January 12, 2009 letter from Code Compliance Specialist to Jason Martel regarding lights
- E: Public Comment

CC: Jason and Shelley Martel, 2104 Spring Creek Drive, Bozeman, MT 59715  
Dori Refling  
Gallatin County Attorney